

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

RUSSELL E. WOMACK, INC.

Plaintiff,

v.

THE NORTH RIVER
INSURANCE COMPANY

Defendant.

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Civil Action No. 5:17-CV-00062

**DEFENDANT THE NORTH RIVER INSURANCE COMPANY'S
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant The North River Insurance Company ("North River") files this Notice of Removal on the basis of diversity of citizenship and jurisdictional amount, and respectfully shows the Court the following:

REMOVAL IS TIMELY

1. North River is the Defendant in Cause No. 2017524182, filed in the 72nd Judicial District Court of Lubbock County, Texas, styled *Russell E. Womack, Inc. v. The North River Insurance Company*. Plaintiff commenced this civil action against North River in the state court on or about February 7, 2017. North River was first served with Plaintiff's Original Petition (the "Petition") on February 23, 2017.

2. Therefore, service of process in this cause was served on North River not more than thirty (30) days before the filing of this notice, and this Notice of Removal is being filed within one year of the date suit was first filed in state court.

BASIS FOR REMOVAL

3. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

A. There is Complete Diversity

4. In its Original Petition, Plaintiff Russell E. Womack, Inc. (“Womack”) acknowledges it is a resident of the State of Texas. (Pl.’s Orig. Pet. at ¶ 2)

5. Both at the time the lawsuit was originally filed, and at the time of removal, Defendant North River is a corporation incorporated and existing under the laws of New Jersey, keeping its principal place of business in Morristown, New Jersey.

B. The Amount in Controversy Exceeds \$75,000.00

6. This is a civil action in which the amount in controversy exceeds the jurisdictional limits of \$75,000.00. In determining the amount in controversy, the Court may consider, “penalties, statutory damages, and punitive damages.” *St Paul Reinsurance Co, Ltd v Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see also Ray v State Farm Lloyds*, 1999 WL 151667, at *2 - 3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff’s case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish). Plaintiff alleges that North River is liable for breach of contract, common law and statutory bad faith, violations of Chapters 541 and 542 of the Texas Insurance, and violations of the Texas Deceptive Trade Practices – Consumer Protection Act (“DTPA”). Plaintiff seeks to recover actual damages, consequential damages, prejudgment interest, additional statutory damages, post-judgment interest, and reasonable and necessary attorneys’ fees. Plaintiff’s Original Petition also indicates that Plaintiff seeks damages between \$200,000 and \$1,000,000. (Pl.’s Orig. Pet. at ¶4) Accordingly, the amount in controversy clearly exceeds \$75,000.

7. Accordingly, by virtue of diversity of citizenship the United States district courts have original jurisdiction.

STATE COURT DOCUMENTS BEING FILED

8. Pursuant to 28 U.S.C. §1446(a), attached hereto as Exhibit “1” is the Index of Matters Being Filed that clearly identifies each document and indicates the date the document was filed in state court. Attached as Exhibit “2” is a copy of the docket sheet, and all documents filed in the state court action are attached.

PRAYER

Therefore, based upon 28 U.S.C. §§1441 and 1446, North River respectfully requests that this action be removed to the United States District Court for the Northern District of Texas, Lubbock Division, and that it be granted such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Brian S. Martin

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**ATTORNEYS FOR DEFENDANT
THE NORTH RIVER INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 22nd day of March, 2017.

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